

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0753/1dn  
RAC:kjf:jf

December 17, 2010

Please note that s. 13.085 of the bill, which requires a two-thirds majority to pass bills that increase the rate of the state sales tax or that increase any of the rates of the income tax or franchise tax, is not legally enforceable. Even though the provision is contained in the statutes, this provision is a rule of proceeding under article IV, section 8, of the Wisconsin Constitution. As such, the legislature is free to follow this rule or not follow the rule. The Wisconsin Supreme Court has held that the remedy for noncompliance with this type of provision lies exclusively within the legislative branch. See *State ex rel. La Follette v. Stitt*, 114 Wis. 2d 358, 363-369 (1983). In other words, while this type of provision may be effective to govern internal legislative procedure, the courts will not enforce this type of provision if the legislature does not follow it.

Also, per your request, the bill permits the legislature to avoid the two-thirds requirement if it passes a joint resolution requiring an advisory referendum on the tax increase and the voters approve the tax increase. You may wish to consider having the legislature pass a bill, instead of a joint resolution, in order to ensure that the requirement for localities to hold a statewide referendum is legally enforceable. It is not certain that a joint resolution would be legally enforceable in this instance.

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